

LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS' SEMIANNUAL REPORT TO THE CONGRESS

Decisions, Final Actions, and Comments
on the Office of Inspector General's
Semiannual Report to the Congress

October 1, 1996 - March 31, 1997

May 30, 1997

FOREWORD

I am pleased to transmit the report of the Legal Services Corporation ("LSC" or "Corporation") regarding the Semiannual Report of LSC's Office of Inspector General ("OIG") for the six-month period of October 1, 1996 through March 31, 1997.

The Corporation's Board of Directors ("Board") recognizes the value of the Inspector General function and remains committed to working with the Inspector General to achieve our goal of providing high quality legal assistance to the poor of our nation.

Douglas S. Eakeley, Chairman
Legal Services Corporation

May 30, 1997

TABLE OF CONTENTS

Message of the Board of Directors	
1	
Background	
2	
The Legal Services Corporation	
2	
Grant-Making Activities	
2	
Management Initiatives	
3	
Competition	
3	
Regulatory Review	
4	
Technology	
7	
Personnel Policies	
8	
Other Matters	
9	
Program Integrity	
10	
Status of Findings and Recommendations	10
Inspection on the Usage of Government-Sponsored AmEx Cards	10
Corporation's Annual Financial Statement Audit	10

TABLE 1: Management Report on OIG Audit Reports of Grantees Issued with Questioned Costs for the Six-Month Period Ending March 31, 1997	11
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TABLE 2: Management Report on Audit Reports Issued During the Six-Month Period Ending March 31, 1997, With Recommendations That Funds Be Put to Better Use	12
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MESSAGE OF THE BOARD OF DIRECTORS

For a second time in as many reports, the Corporation's Board of Directors finds itself in the unfortunate position of having to devote its message on the Inspector General's Semiannual Report for the period of October 1, 1996 - March 31, 1997 ("the Report") to clarifications of actions that the Inspector General perceives as assaults by this Board on the independence of his office. This is unfortunate in the sense that the prominence given over to a discussion of these issues detracts -- and distracts -- from the substantive message of the Report as a whole, which is, that the Corporation is operating in a fiscally responsible way in full compliance with its authorizing and appropriations acts. The Board is appropriately proud to have its efforts and that of the Corporation's management in running an effective and efficient program documented to Congress by its independent OIG.

With regard to the matters that were placed at issue by the Inspector General in his previous Semiannual Report, these have indeed been resolved by Board action where necessary. While the Inspector General may continue to harbor "some fundamental difference[] of opinion" as to these matters, the Board has acted responsibly and in good faith, and its actions have not, despite the fears of the Inspector General, interfered with the independence of the OIG. The Inspector General's certification in both Reports as to the independence of his office speaks for itself. The Board's continuing support for the technology projects recommended by the Inspector General is addressed in detail under the heading "Management Initiatives, Technology."

Similarly, under the heading "Management Initiatives, Personnel Policies" (page 8, *infra*), the Board clarifies and places in proper perspective the Inspector General's lingering concerns about the Corporation's newly adopted Personnel Manual. Suffice it to say here that the Board perceives no threat in the Personnel Manual to the independence of the OIG or that of the Inspector General in performing his statutory responsibilities -- nor has the Inspector General identified any such threat. In the unlikely event that any future action should pose such a threat, you may rest assured that the Board would deal with such issue promptly and properly.

Finally, with the concurrence of the Inspector General, the Board at its May 1997 meeting reached a satisfactory resolution on the policy for communications with Congress.

The Board has made every effort, in all of its initiatives, to convey its intent to work with the Inspector General in maintaining full implementation of both the letter and spirit of the IG Act. In that spirit of cooperation, the Board looks forward to keeping the energies of the Corporation focused on the delivery of high quality legal assistance in full compliance with the law.

BACKGROUND

The Legal Services Corporation

The Corporation is a private, non-profit corporation established in the District of Columbia by the Legal Services Corporation Act of 1974, as amended ("the LSC Act"),¹ to provide financial support for legal assistance in non-criminal proceedings to persons unable to afford legal services. Under the LSC Act, the Corporation is governed by an eleven-member bi-partisan Board of Directors appointed by the President of the United States, with the advice and consent of the Senate. The Board appoints the President of the Corporation, who serves as the Corporation's chief executive officer, subject to general policies established by the Board.

The 1988 Amendments to the Inspector General Act of 1978 required LSC to establish an Office of Inspector General ("OIG") and extended specific provisions of the 1978 Act to LSC. Accordingly, such an office was established by and for the Corporation. The Inspector General is appointed by, reports to and serves under the general supervision of the Corporation's Board of Directors.

Grant-Making Activities

To carry out the purposes of the LSC Act, Congress appropriated to the Corporation \$283 million for fiscal year 1997 (Pub. L. 104-208), \$274.4 million of which the Corporation is using to fund 280 legal services programs to provide legal assistance to indigent persons throughout the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and Micronesia.

¹ 42 U.S.C. §§ 2996 - 2996l.

MANAGEMENT INITIATIVES

During the reporting period, the Corporation focused much of its energy on completing the award of grants for calendar year 1997 for the delivery of legal services to eligible clients under the new comprehensive competitive system, and continuing the timely implementation of the statutory requirements and restrictions which were extended by the appropriations act for fiscal year 1997. The Corporation also substantially completed its personnel policies initiatives and continued to pursue the resources needed for its technology initiatives.

Competition

The Corporation successfully completed the first full funding cycle under the new competitive grant award process during the reporting period. LSC staff and independent reviewers with expertise in the delivery of legal assistance to low-income persons conducted comprehensive reviews and evaluations of 291 competitive applications. Teams comprised of LSC staff and outside experts also conducted on-site capability assessment visits in 20 service areas. These visits were designed to evaluate the ability of applicants to provide high quality, effective and efficient services to eligible clients. Pursuant to the Corporation's competition regulation, review panels were convened to make funding recommendations for 26 service areas for which multiple competing applications were filed.

The majority of grants for 1997 were awarded in December, 1996. Awards were made in 14 service areas to applicants that had not received a grant for that service area in the prior fiscal year. In six service areas, the Corporation determined that current providers did not meet the selection criteria and competition was reopened or an interim provider was sought pending the next competitive grant cycle. As of this date, the award process is not final in four service areas.

The Corporation's competitive grants process captured a tremendous amount of information about legal services delivery nationwide. With this broad base of information, the Corporation will work directly with applicants and recipients to achieve program improvements by identifying weaknesses, sharing innovations and best practices, and where necessary, making the decision not to fund those applicants that fail to demonstrate the capacity to provide quality legal services to eligible clients. Corporation staff continue to balance the responsibility of implementing a competitive grants process with the ongoing responsibility to provide guidance to current legal services providers.

For the 1998 competition, the Corporation reviewed the procedures used during the 1997 competition. Applicants, staff, outside consultants who participated in the proposal

reviews, and other interested parties were asked to evaluate the grants process and provide the Corporation with an assessment of those areas of the process that should be revised. This review resulted in several procedural revisions to make the 1998 process less burdensome for applicants, yet more useful to the Corporation in providing the critical information needed to assess the capacity of applicants to deliver quality legal services. The Board was advised of the recommended revisions and is supportive of the efforts undertaken to improve and streamline the competitive grants process.

Regulatory Review

As indicated in our last report, the Board adopted 14 regulations, which became effective immediately upon publication in August 1996, as emergency, interim regulations,² and approved for comment proposed revisions to a 15th regulation. The 15 regulations are as follows:

1. 45 CFR Part 1610: Use of non-LSC funds (interim)
2. 45 CFR Part 1612: Restrictions on Lobbying and Certain Other Activities (interim)
3. 45 CFR Part 1617: Class actions (interim)
4. 45 CFR Part 1620: Priorities in Use of Resources (interim)
5. 45 CFR Part 1626: Restrictions on Legal Assistance to Aliens (interim)
6. 45 CFR Part 1627: Subgrants and Dues (interim)
7. 45 CFR Part 1632: Redistricting (interim)
8. 45 CFR Part 1633: Restriction on Representation in Certain Eviction Proceedings (interim)

² Interim rules are authorized when there is a need for prompt guidance on how to comply with substantially revised legislative requirements and it is determined that prior notice and public comment are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B) and 553 (d)(3). Although the interim rules were effective upon publication, they requested public comment for consideration by the Corporation in anticipation of publishing final rules in the near future.

9. 45 CFR Part 1636: Client Identity and Statement of Facts (interim)
10. 45 CFR Part 1637: Representation of Prisoners (interim)
11. 45 CFR Part 1638: Restriction on Solicitation (interim)
12. 45 CFR Part 1639: Welfare Reform (interim)
13. 45 CFR Part 1640: Application of Federal Law to LSC Recipients (interim)
14. 45 CFR Part 1642: Attorneys' Fees (interim)
15. 45 CFR Part 1609: Fee-generating cases (proposed).

The Board adopted final versions of four of these interim rules -- namely, Parts 1610, 1617, 1632 and 1633, which were published as final regulations in December 1996 and became effective on January 1, 1997. During this reporting period, the Board considered and approved final versions of nine more of the above rules: Parts 1609, 1612, 1620, 1626, 1627, 1636, 1637, 1638, and 1640. These final regulations were published on April 21, 1997, to be effective May 21, 1997.

In addition, during the reporting period, the Board considered and adopted a final version of Part 1642, which was published on May 12, 1997. That Part deals with the receipt of certain attorneys' fees by recipients of grants from the Corporation. Under the heading "Legislative and Regulatory Review," the Inspector General asserts a significant disagreement with Part 1642 as adopted by the Board. A brief history will illuminate the dispute.

No provision of the LSC Act deals directly with receipt of attorneys' fees by LSC grantees. Over the years, the Corporation has consistently interpreted the LSC Act, in light of its legislative history, to preclude charging clients fees for LSC-funded representation. However, this interpretation of the LSC Act was never formally adopted by any past Board of the Corporation as a regulation, and the present Board has not had the opportunity to fully consider the question. In recent years, Congress has considered a number of bills with conflicting provisions on attorneys' fees, but none has been enacted until the appropriations act for fiscal year 1996. For example, several reauthorization bills, none of which were enacted, would have prohibited the award of attorneys' fees from agricultural employers to clients represented by LSC recipients. Early versions of H.R. 2076 in the 104th Congress appropriating funds to the Corporation for fiscal year 1996 contained provisions which would have authorized recipients to receive some attorneys' fees.

As finally enacted into law, the 1996 appropriations act, Pub. L. 104-134, contained a provision, Section 504(a)(13), which prohibits recipients from collecting or retaining attorneys' fees awarded "pursuant to any Federal or State law permitting or requiring the awarding of such fees." A careful examination of that language led the Corporation to prohibit fee shifting -- i.e., fees from adversaries, not clients -- in the interim rule issued in August 1996. Subsequent consideration led the Corporation to conclude that the intent was also to prohibit the receipt of statutorily-authorized fees from a client's retroactive statutory benefits (i.e., Social Security fees), and the final version of Part 1642 adopted by the Board in March 1997 reflects this interpretation.

The Inspector General complains that the regulation does not go further to prohibit all receipt of payments from clients under any circumstance or situation. In the Board's view, the attorneys' fee provision of the 1996 appropriations act does not reach beyond statutorily permitted or required fee arrangements, either explicitly or implicitly. Thus, in promulgating Part 1642 to implement the statutory provision on attorneys' fee, the Board did not purport to regulate any and all fee arrangements. The OIG misinterprets the silence of Part 1642 as tantamount to permitting the collection of fees directly from clients. To the contrary, the Board has not changed the Corporation's long-standing policy, but has merely postponed for now any decision on the need to regulate more broadly in the area of fee arrangements.

At its March 1997 meeting, the Board considered and took action on two other rules. It approved revisions to Part 1639 on Welfare Reform to be issued for further public comment. That comment period expired on April 25, 1997, and the Board considered and adopted a final version of Part 1639 at its May 1997 meeting. The interim rule issued in August 1996 restricting grantee activities with respect to welfare reform as required by the appropriations act has and will continue to remain in effect until superseded by the final regulation.

Finally, the Board, at its March 1997 meeting, was presented with and approved a revised interim rule for Part 1610 on the use of non-LSC funds by LSC recipients. The revisions were intended to respond in part to certain constitutional concerns raised in litigation, while preserving the statutory system that prohibits recipients of LSC funding from engaging in restricted activities or subsidizing such activities with LSC funds. Constitutional challenges to these statutory provisions have been brought in the United States District Court for Hawaii and in the Eastern District of New York. To ensure that LSC's regulations and policies were constitutionally sound and to maintain the integrity of LSC-funded programs, the Board approved changes to Part 1610 that remove restrictions on the transfer of a grantee's non-LSC funds and adds standards to ensure that the LSC-funded program has objective integrity and independence from restricted activities by requiring the recipient to maintain both a physical and a financial separation from any organization or entity that

engages in restricted activities. The revised interim rule became effective on March 14, 1997, and the comment period on the revisions ended on April 14, 1997. The Board considered and adopted a final version of Part 1610 at its May 1997 meeting.

The OIG, as well as the interested public, worked closely with the Board and Corporation's staff on all these regulatory efforts.

Technology

During the reporting period, the Board affirmed its commitment to improving the delivery of services in such areas as intake systems, case management, legal work production, legal research, exchange of information, and program management through the use of technology. The Corporation's budget request for fiscal year 1998 seeks \$12 million for technology initiatives that are consistent with the recommendations in the Inspector General's April 1996 report on *Increasing Legal Services Delivery Capacity Through Information Technology* and with criteria developed by OMB relating to information systems investments. The bulk of the requested technology funds would be designated for direct, one-time grants to LSC grantees to improve their use of existing technology to increase efficiency and client services. Some funds would be allocated to projects designed to test and evaluate new applications of technology to the delivery of legal services, including centralized telephone-based intake systems, "hotlines," computer-based *pro se* and community legal education projects, and use of the Internet for training and support for legal services and *pro bono* attorneys.

The FY1998 Budget Request is reflective of the Board's continued support for the technology project initiatives recommended by its Inspector General. As the technology initiatives move toward an operational phase, however, it was appropriate to shift responsibility for project implementation from the OIG to Corporation management to avoid any impairment of the OIG's objectivity and independence by its becoming involved in program operations.

In addition, significant progress has been made during the reporting period on the Corporation's upgrading of its information systems to facilitate reporting by grantees and the dissemination of information to grantees, the Congress, and the public at large and to enhance the efficiency of the Corporation's grant making. The initial phase of LSC's Integrated Information System has been completed which allows recipients of LSC funds to report on grant activity through the Internet. Enhanced network operations and upgraded desktop computer systems have been installed at the Corporation to support the development of the Integrated Information System and staff access to the system. The upgraded systems

also permit staff to work more efficiently and economically. Finally, LSC has installed an electronic law library, using a 56 bay CD-Rom tower, which not only saves space, but allows staff quick access to library materials from their desktops.

Finally, under the heading “Audits,” the Inspector General reports that its Audit Information Management System (AIMS) became operational during the reporting period. As described in the report, financial data and other administrative information is automatically transferred from the independent auditors’ reports to LSC management through AIMS. Similarly, the referral of audit findings to LSC management and the tracking of their resolution is described as an automatic and paper less process, resulting in substantial savings of time and personnel by both OIG and LSC management. The first annual audit reports to be submitted through AIMS were not due until after the close of this reporting period. Therefore, the Corporation has had no experience with which to assess the efficacy of the system’s interface with LSC management. Moreover, AIMS has yet to become fully operational with respect to referrals to LSC management for follow-up of significant reportable findings and recommendations pursuant to Section 509(k)(2) of Pub. L. 104-134. Nonetheless, the Corporation looks forward to the opportunity to work with the OIG to ensure that AIMS delivers timely, accurate, and useful information for LSC management and to achieve the savings of time and personnel, while maintaining the effectiveness of the referral and tracking processes.

Personnel Policies

The Corporation has substantially completed its initiative to revise and update its personnel policies and procedures, with the assistance of consultants from the Office of Personnel Management (“OPM”). During this reporting period, the Board took up and approved the remaining portions of the Personnel Manual.

Following extensive consultation and comment by the OIG on the policies and procedures embodied in the Personnel Manual, the Board was assured by the Inspector General that the OIG would comply with the Manual and was satisfied that the policies and procedures did not in any way impinge on the independence of the OIG or its statutory authority in specific personnel matters. For example, the Manual expressly reserves to the Inspector General “full authority to select, appoint and employ such officers and employees as may be necessary to carry out the functions, powers and duties” of his office, as required by the IG Act. Other sections leave the Inspector General with authority to determine the classification, re-classification and pay range for his employees, the hours and place of work, furlough policy, merit increases, accommodation with the Americans With Disabilities Act and other aspects of the management of his work force. In other areas, notably fringe

benefits, the IG and the President of the Corporation, for purposes of uniformity, are to act in concert, with any disagreement between them to be resolved by the Board. Only in the case of broad personnel policies, such as non-discrimination, sexual harassment, and the employment-at-will doctrine, has the Board reserved the right of action to itself.

In light of the many accommodations to and explicit recognition of the Inspector General's statutory personnel authority in the Personnel Manual, the Inspector General, under the heading "Inspector General's Message," gives undue prominence to one remaining difference of opinion. As the Board understands the Inspector General's articulation of the issue, it goes to the form and extent of applicability of the policies in the Personnel Manual, rather than their substance. This matter remains to be resolved.

Other Matters

The Corporation prepared a proposed \$340 million budget for FY 1988, which, as noted above, includes new initiatives to promote the use of technology to improve the efficiency of the delivery of legal services. Board Chair Douglas Eakeley, Vice-Chair John Erlenborn, and President Martha Bergmark testified in support of the budget at a hearing before the Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies of the House Appropriations Committee.

Also, during this period, the Corporation successfully completed lease negotiations and executed an agreement to reduce its floor space by over 22,000 square feet. The plan permitted the Corporation to consolidate most of its staff into space on the 10th Floor, while providing for expanded and reconfigured space for the Inspector General and his staff on the 11th Floor at LSC's headquarters at 750 First Street, N.E., Washington, D.C.

PROGRAM INTEGRITY

Status of Findings and Recommendations

The Board is pleased that the Inspector General's Report for this period reflects no open audit recommendations and no significant compliance findings.

Inspection on the Usage of Government-Sponsored American Express Cards

As reported by the Inspector General, the OIG recommendations to Corporation management on policy and guidance for proper use of government-sponsored American Express cards were implemented in the course of the inspection.

Corporation's Annual Financial Statement Audit

The completed annual audit of the Corporation's accounts and financial records for fiscal year 1996 was presented to the Board at its March 1997 meeting. The report found all accounts and records to be in order and no material weaknesses were reported in the separate report on Compliance with Laws and Regulations and Internal Controls.

TABLE 1

**Management Report on
Office of Inspector General Audits of Grantees
Issued With Questioned Costs
For the Six-Month Period Ending March 31, 1997**

	Number of Reports	Questioned Costs	Unsupported Costs
A. Audit Reports for grantees on which no management decision had been made by the commencement of the reporting period.	0	\$ 0	\$ 0
B. Audit Reports issued during the reporting period.	0	\$ 0	\$ 0
Subtotals (A + B)	0	\$ 0	\$ 0
MINUS:			
C. Audit Reports for which a management decision was made during the reporting period:.	0	\$ 0	\$ 0
(I) dollar value of recommendations that were agreed to by management	0	\$ 0	\$ 0
(ii) dollar value of recommendations that were not agreed to by management	0	\$ 0	\$ 0
D. Audit Reports for which no management decision had been made by the end of the reporting period.	0	\$ 0	\$ 0
Audit Reports for which no management decision had been made within six months of issuance.	0	\$ 0	\$ 0

TABLE 2

**Management Report on Audit Reports Issued During
the Six-Month Period Ending March 31, 1997
With Recommendations That Funds Be Put to Better Use**

		Number of Reports	Dollar Value
A.	Audit Reports for which no management decision has been made by the commencement of the reporting period.	0	\$ 0
B.	Audit Reports issued during the reporting period.	0	\$ 0
	Subtotals (A + B)	0	\$ 0
MINUS:			
C.	Audit Reports for which a management decision was made during the reporting period:	0	\$ 0
	(I) dollar value of recommendations that were agreed to by management	0	\$ 0
	(ii) dollar value of recommendations that were not agreed to by management	0	\$ 0
D.	Audit Reports for which no management decision had been made by the end of the reporting period.	0	\$ 0
	Audit Reports for which no management decision had been made within six months of issuance.	0	\$ 0